

REMARKS

Claim Rejections -35 USC §112

In so far as this rejection may be applied to the claims added herein, reconsideration of the rejection is requested. The examiner appears to be applying a rule that every occurrence of "the" requires an antecedent basis. (Applicants attorney respectfully agrees that such a rule is probably precise with respect to the term "said".) The undersign attorney would ordinarily be willing to change every occurrence of "the" to "a", however, any attempt to change every occurrence of the term "the" to "a" in the present claims produces grotesque grammar that would be unintelligible to virtually anyone.

The application of such a *per se* rule with respect to the term "the" is inconsistent with the MPEP and decisions of the Court of Appeals for the Federal Circuit. The MPEP includes the following that expressly recites that :

"2173.05(e) Lack of Antecedent Basis [R-1]

A claim is indefinite when it contains words or phrases whose meaning is unclear. The lack of clarity could arise where a claim refers to "said lever" or "the lever," where the claim contains no earlier recitation or limitation of a lever and where it would be unclear as to what element the limitation was making reference. Similarly, if two different levers are recited earlier in the claim, the recitation of "said lever" in the same or subsequent claim would be unclear where it is uncertain which of the two levers was intended. A claim which refers to "said aluminum lever," but recites only "a lever" earlier in the claim, is indefinite because it is uncertain as to the lever to which reference is made. **Obviously, however, the failure to provide explicit antecedent basis for terms does not always render a claim indefinite.** If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite. *Ex parte Porter*, 25 USPQ2d 1144, 1145 (Bd. Pat. App. & Inter. 1992) ("controlled stream of fluid" provided reasonable antecedent basis for "the controlled fluid"). Inherent components of elements recited have antecedent basis in the recitation of the components themselves. For example, the limitation "the outer surface of said sphere" would not require an antecedent recitation that the sphere has an outer surface. >See *Bose Corp. v. JBL, Inc.*, 274 F.3d 1354, 1359, 61 USPQ2d 1216, 1218-19 (Fed. Cir 2001) (holding that recitation of "an ellipse" provided

antecedent basis for "an ellipse having a major diameter" because "[t]here can be no dispute that mathematically an inherent characteristic of an ellipse is a major diameter")." **(Emphasis Added)**<

In addition the Court of Appeals for the Federal Circuit has expressly considered claim language that includes the term "the". See <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=Fed&navby=case&no=021400> *Abbott Laboratories v. Baxter Pharm. Products, Inc.*, 334 F.3d 1274 (Fed. Cir. 2003) The decision held that the classic Markush group is not infringed when two or more members of the claimed group are *combined* by the infringer. To impale such an infringer, the claim must have the suffix "or a *combination* of such members" appended to the group, or should be preceded by the prefix "wherein X is at *least one member* selected from the group" The immediate relevance is that the classic markush group language uses precisely the language used in original claim 1 i.e. "...the group consisting of". This language is from the watershed namesake patent is U.S. 1,506,316 issued to Eugene Markush in 1924. The Court of Appeals decision illustrates that the court has absolutely no concern about the use of the term "the" in this context.

Accordingly, it is respectfully submitted use of the term "the" in the claims added herein is fully consistent with accepted United States practice.

Claim Rejections -35 USC §102

Claims 1-4, 9, 12, 15, 17-18, 20-23, 26, 28-29, 31-32, 34-39 have been rejected under 35 U.S.C. 102(e) as being anticipated by McKay Patent Application Publication (U.S. 2001/0036832). All of the original claims have been canceled in new claims 40-78 have been added. The claim language changes are illustrated by portions of the independent claims listed below (Emphasis added).

"40. (new) A system for providing assistance to emergency personnel which comprises:

apparatus for first detecting the presence of personnel within a protected premises;

apparatus for continuously storing data defining the location of personnel within a protected premises;

apparatus for **subsequentlydetecting** an imminent threat selected from the group consisting of fire, seismological and terrorist events; ..."

"60. (new) A system for providing assistance to emergency personnel which comprises:

apparatus for first detecting the presence of personnel within a protected premises and apparatus for storing the location of personnel within protected premises that includes nonvolatile memory and which is capable of storing such data for a plurality of time periods;

apparatus for **subsequentlydetecting** an imminent threat selected from the group consisting of fire, seismological and terrorist events;..."

"73. (new) A method for providing assistance to emergency personnel which includes:

detecting the presence of personnel within a protected premises;

storing data defining the location of personnel within a protected premises;

detecting a **subsequent** imminent threat selected from a group consisting of a fire, seismological and terrorist events; ..."

Thus, all of the claims now pending make clear that the detection of a subsequent threat occurs after first detecting the presence of personnel and storing data defining the location of the personnel within a protected premises. (For example, the protected premises might be monitored for years before any fire, seismological and/or terrorist event is detected.) In sharp contrast the cited Lepkofker patent publication 2004/0021569 is essentially a plurality of inertial navigation systems installed on firefighters (or animals, trains, trucks, subway cars, shipping containers, and the like) and information from the respective inertial navigation systems provides tracking information. The mere statement in paragraph 0019 digitized building plans, if available, can be used does not remotely suggest any system or method that essentially continuously monitors a protected premises so that in the event of a subsequent fire, seismological and/or terrorist event emergency workers will be able to rapidly assist the personnel and the protected premises. In addition, the reference is clearly directed to safeguarding the emergency workers such as firefighters within a building as opposed to assisting firefighters in locating personnel within a building. Thus, the reference has both a different structure and a different purpose than the present invention.

Claim Rejections -35 USC §103

Claims 5-8 have been rejected under 35 U.S.C. 103(a) as being unpatentable over McKay Patent Application Publication (U.S. 2001/0036832) in view of Wiemeyer (U.S. 5,726,633). In so far as the rejection under 35 USC §103 in the office action mailed on 08/09/2005 might be applied to the claims herein consideration of the following is requested. Wiemeyer (U.S. 5,726,633) describes a smoke detector. The respective references do not show or suggest, alone or in combination apparatus or a method that involves detection of a subsequent fire, seismological and/or terrorist event threat occurs after first detecting the presence of personnel and storing data defining the location of the personnel within a protected premises. As noted above the protected premises might be monitored for years before any fire, seismological

and/or terrorist event is detected. In sharp contrast the cited Lepkofker patent publication 2004/0021569 is essentially a plurality of inertial navigation systems installed on firefighters (or animals, trains, trucks, subway cars, shipping containers, and the like) and information from the respective inertial navigation systems provides tracking information. The mere statement in paragraph 0019 that digitized building plans, if available, can be used does not remotely suggest any system or method that essentially continuously monitors a protected premises so that in the event of a subsequent fire, seismological and/or terrorist event emergency workers will be able to rapidly assist the personnel and the protected premises. In addition, the reference is clearly directed to safeguarding the emergency workers such as firefighters within a building as opposed to assisting firefighters in locating personnel within a building. Thus, the reference has both a different structure and a different purpose than the present invention. Accordingly, the references do not show or suggest the claimed invention.

It is respectfully submitted that the claims submitted herewith are allowable and such action is requested.

Should a petition for an Extension of Time be necessary for the timely reply to the outstanding office action (or such a petition has been made and an additional extension is necessary) petition is hereby made in the Commissioner is authorized to charge any fees (including additional claim fees) to Deposit Account Number 19-2635 under Attorney Docket Number H0006717-0555.

Respectfully submitted,



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A handwritten signature in black ink, appearing to read 'Robert S. Smith', is written over a horizontal line.